

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

*Masiowski v. AmerisourceBergen Drug Corp.,  
et al.*, No. 18-op-45985

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**PLAINTIFF MASIOWSKI'S MOTION TO EXTEND DEADLINE TO REPLY TO  
DEFENDANTS' OPPOSITIONS TO PLAINTIFF MASIOWSKI'S MOTION FOR  
LEAVE TO AMEND, AND RESPOND TO THE PBM DEFENDANTS' MOTION TO  
STRIKE**

Plaintiff Masiowski, by and through undersigned counsel, move this Court to extend to February 13, 2025, the deadline to file his reply and opposition brief to The PBMS' Joint Motion To Strike And Join Opposition To Michael Masiowski's Motion For Leave To Amend [Doc. 5878]; reply brief to Distributor Defendants' Opposition To Plaintiff Michael Masiowski's Corrected Motion For Leave To Amend [Doc. 5901]; and reply brief to Manufacturer Defendants' Joinder in Distributor Defendants; Opposition To Plaintiff Michael Masiowski's Corrected Motion For Leave To Amend [5909]. Plaintiff Masiowski's reply briefs and opposition to the PBM [Doc. 5878] and Distributor Defendants [Doc. 5901] are currently due January 30<sup>th</sup>, 2025; and Plaintiff Masiowski's reply brief to the Manufacturer Defendants' Joinder [5909] is due January 31<sup>st</sup>, 2025. Plaintiff Masiowski is requesting a two week extension to file an omnibus reply brief and opposition to Defendants' motions and oppositions, and this is Plaintiff Masiowski's first request for an extension. On January 28, 2024, the PBM Defendants took no position as to Plaintiff's request. The Manufacturer and Distributor Defendants have yet to state their positions.

Plaintiff Masiowski has already filed a reply [Doc. 5790], on November 18, 2024, to the Pharmacy Defendants' Opposition To Plaintiff Masiowski's Motion to Amend [5771].

Good cause supports granting this request for several reasons. The Court has provided the PEC and Defendants alike multiple extensions to file Omnibus Motions for Leave to Amend and Oppositions to said Motions for Leave to Amend, respectively. On August 16, 2024, Certain Defendants<sup>1</sup> filed an Unopposed Motion to Extend Deadline to Oppose Motions For Leave to Amend [5590]. The Court granted Defendants' Motion on August 19, 2024. Tris Pharma and Ahold Delhaize filed a motion to extend the deadline to Oppose Plaintiffs' Motion for Leave to Amend [Docs. 5600, 5604] on August 22, 2024, and August 26, 2024, respectively. The Court granted these Defendants motions on August 30, 2024.

On September 18, 2024, Defendants filed a Motion to Dismiss Plaintiff Masiowski's Complaint for Failure to Submit a Plaintiff Fact Sheet [Doc. 5636]. On September 27, 2024, Defendants filed an unopposed Motion requesting the Court first decide "Defendants' Motions to Dismiss and extend the deadline for defendants to respond, if necessary, to Plaintiff's Motion for Leave to Amend and Corrected Motion for Leave to Amend to ten (10) business days after the Court issues a decision on the Motion to Dismiss." Doc. 5657 at 2. The Court granted Defendants unopposed motion on the same day. On November 18, 2024, the Pharmacy Defendants filed an Opposition to Plaintiff Masiowski's Motion for Leave to Amend [Doc. 35 in 1:18-op-45985]. Thus

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<sup>1</sup> These Defendants were: The Express Scripts Defendants are Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Order Processing, Inc.; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; Evernorth Health, Inc. (formerly Express Scripts Holding Company); and Express Scripts Specialty Distribution Services, Inc.; The Optum Defendants are UnitedHealth Group Incorporated, Optum, Inc., OptumInsight, Inc., OptumInsight Life Sciences, Inc., OptumRx, Inc., Optum Discount Card Services, LLC, Optum Perks, LLC, OptumHealth Care Solutions, LLC, OptumHealth Holdings, LLC, and Optum Health Networks, Inc.; The Aurobindo Defendants are Aurobindo Pharma USA, Inc., and Aurolife Pharma LLC.; The Winn-Dixie Defendants are Winn-Dixie Stores, Inc., Southeastern Grocers, Inc., and Winn-Dixie Logistics, LLC (f/k/a Winn-Dixie Logistics, Inc.); The Albertsons Defendants are Albertsons Companies, Inc, Albertson's LLC, Acme Markets, Inc., Randall's Food & Drug, LP, Safeway Inc., and United Supermarkets, LLC.

extending the deadline for the Pharmacy Defendants to Oppose Plaintiff Masiowski's Motion by months.

The PBM Defendants filed a motion to extend the deadline to oppose motions to amend, for a second time, on November 12, 2024. The PBM Defendants requested that the Court extend their deadline as to January 16, 2025, and stated that "The PBM Defendants' opposition is currently due December 6, 2024 (the date on which the PBM Defendants now seek to file their reply to their motion to strike)." [Doc. 5747] at 2. The Court granted the PBM Defendants' Motion on November 12, 2024. Now the PBM filed an opposition to Plaintiff Masiowski's Motion for Leave to Amend and Motion to Strike Plaintiff Masiowski's Amended Exhibit A.

On January 24, 2024, the PEC filed a motion to extend time to reply to Defendants Oppositions to the PEC's motions for leave to amend. The Court granted the PEC's motion on January 27, 2025, extending the deadline to reply to July 2, 2025.

Plaintiff Masiowski seeks a minimal extension to file an omnibus reply, and opposition to the PBM, Manufacturer, and Distributor Defendants' motions. Granting Plaintiff Masiowski's request would be in the interest of judicial efficiency and economy. Plaintiff Masiowski has complied with the Court's orders regarding the amendment process and has not opposed Defendants' requests for extensions. Granting Plaintiff's request for an extension is in keeping with the extensions previously provided to Defendants and other litigants in the MDL.

Moreover, Plaintiff Masiowski requires time to parse Defendants' overarching and case-specific assertions in order to provide efficient replies to Defendants' specific arguments and will be designed to assist the Court (rather than confound) in its determination. Last, a two week extension to file an omnibus reply and opposition will cause no prejudice to Defendants, or the Court, as the PEC has been granted an extension to July 2, 2025, to file reply briefs on behalf of

other MDL Plaintiffs. As such, Plaintiff Masiowski respectfully requests this Court grant his request for a two week extension.

Dated: January 28, 2025.

Respectfully submitted,

/s/ Paul S. Rothstein

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*Attorney for Plaintiff Masiowski*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 28, 2025, I electronically filed the foregoing PLAINTIFF MASIOWSKI'S MOTION TO EXTEND DEADLINE TO REPLY TO DEFENDANTS' OPPOSITIONS TO PLAINTIFF MASIOWSKI'S MOTION FOR LEAVE TO AMEND, AND RESPOND TO THE PBM DEFENDANTS' MOTION TO STRIKE with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/ Paul S. Rothstein

Paul S. Rothstein

*Attorney for Plaintiff Masiowski*